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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE TRUST
12 FUND, and its JOINT BOARD OF TRUSTEES;
CHRIS CHRISTOPHERSEN and JOHN
13 MAGGIORE, Trustees;

14 NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
15 WORKERS PENSION TRUST FUND, and its
JOINT BOARD OF TRUSTEES; CHRIS
16 CHRISTOPHERSEN and ALFRED (SKIP)
WELTZ, Trustees;

17 NORTHERN CALIFORNIA GLAZIERS
18 INDIVIDUAL ACCOUNT RETIREMENT TRUST
FUND; and its JOINT BOARDS OF TRUSTEES;
19 CHRIS CHRISTOPHERSEN and ALFRED (SKIP)
WELTZ, Trustees;

20 DISTRICT COUNCIL 16 NORTHERN
21 CALIFORNIA JOURNEYMAN AND
APPRENTICE TRAINING TRUST FUND, and its
22 JOINT BOARD OF TRUSTEES; CHRIS
CHRISTOPHERSEN and MARIAN
23 BOURBOULIS, Trustees;

24 I.U.P.A.T. UNION AND INDUSTRY NATIONAL
PENSION FUND, and its JOINT BOARD OF
25 TRUSTEES; KENNETH RIGMAIDEN, Trustee;
and

26 DISTRICT COUNCIL NO. 16 OF THE
27 INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES,

Case No.:

COMPLAINT

1 NLRA § 2(2), 29 U.S.C. § 152(2).

2 Jurisdiction

3 4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by
4 virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions
5 of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA,
6 seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

7 5. Jurisdiction exists in this Court over all the claims by virtue of the Labor
8 Management Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce
9 the terms and conditions of a valid Bargaining Agreement.

10 6. To the extent jurisdiction over any claim does not exist under ERISA or the
11 LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. §
12 1367 in that they arise out of a common nucleus of operative facts that form the basis of the
13 federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

14 Venue

15 7. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an
16 action is brought under ERISA § 502 in a district court of the United States, it may be brought at
17 Plaintiffs’ discretion, in the district where the plan is administered, where the breach took place, or
18 where a defendant resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this
19 district at their principal place of business in Alameda, California. Thus, jurisdiction and venue are
20 properly grounded with this Court.

21 8. Venue exists in this Court with respect to the claims under LMRA § 301, 29 U.S.C.
22 § 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of
23 business in this district, its duly authorized officers or agents are engaged in representing
24 employee members in this district, and the claims arise in this district.

25 Intradistrict Assignment

26 9. The basis for assignment of this action to this court’s Oakland Division is that all of
27 the events and omissions giving rise to Plaintiffs’ claims occurred in the County of Alameda,
28

1 where ERISA Plaintiffs' Funds and the Bargained Plans are administered, and where Defendant
2 therefore failed to fulfill its statutory and contractual obligations to Plaintiffs.

3 Bargaining Agreement

4 10. Defendant entered into the Northern California Glaziers Master Agreement
5 ("Bargaining Agreement") between the Union and the Northern California Glass Management
6 Association, requiring employer contributions to Plaintiffs' ERISA Funds, to the Union for union
7 dues, and to the other plans more fully described in the Bargaining Agreement. Plaintiffs are third
8 party beneficiaries of the Bargaining Agreement.

9 11. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to
10 collect monies due by Defendant to the following plans: the IUPAT Finishing Trades Institute, the
11 IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Skills, Safety,
12 Supervisor & Survival Training Awards Recognition (STAR) Program, Inc., the Northern
13 California Glass Management Association Industry Fund, and the IUPAT Political Action
14 Together-Political Committee (collectively referred to herein as the "Bargained Plans").

15 12. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs
16 (the "Trust Agreements"), which are incorporated into the Bargaining Agreement and made
17 binding on Defendant, Defendant is required to regularly pay to ERISA Plaintiffs, the Bargained
18 Plans, and the Union, certain sums of money, the amounts of which are determined by the hours
19 worked by Defendant's employees. Contributions are due on the fifteenth (15th) day of the month
20 following the month hours were worked, and considered delinquent if not received by the last day
21 of that month. Defendant is also required, pursuant to the Bargaining and Trust Agreements, to
22 pay liquidated damages in the amount of ten percent (10%) for each delinquent contribution, but in
23 the amount of twenty percent (20%) for each delinquent contribution which is the subject of
24 litigation. Moreover, the Bargaining and Trust Agreements provide that interest accrues on
25 delinquent contributions at the rates reasonably set by the Trustees from the day contributions
26 become delinquent, which is the first (1st) day of the month following the month in which payment
27 was due, until paid.

13. The Bargaining Agreement further requires Defendant to maintain time records or time cards, and to submit any and all relevant records to Plaintiffs for examination to determine whether Defendant is making full and prompt payment of all sums required to be paid by it to Plaintiffs. Should an audit of Defendant's records reveal Defendant has failed to provide full and prompt payment of all sums due, Defendant must reimburse Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements.

Factual Allegations

14. Defendant has failed and refused to pay amounts found due to Plaintiffs as a result of an audit of Defendant's payroll records for the period from March 1, 2015 through July 31, 2015. Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid contributions for that period.

15. Defendant has failed and refused to pay contributions for hours worked by its employees during the months of October 2015, December 2015, March 2016, April 2016, and June 2016. Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid contributions for that period and for late-paid contributions for the months of: August 2015, September 2015, November 2015, January through February 2016, and May 2016.

16. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated damages and interest on delinquent contributions not specified above, found due on timecards, further audit, or otherwise, including estimated contributions for any months Defendant failed to report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there are any additional amounts due from Defendant.

FIRST CAUSE OF ACTION For Audit Payment, Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Defendant

17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.

18. Defendant has a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining

1 Agreement and Trust Agreements. Defendant also has a contractual duty under the Bargaining
2 Agreement, and Trust Agreements incorporated therein, to permit an audit of its records to
3 determine whether it is making full and prompt payment of all sums required to be paid by it to
4 Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

5 19. In addition, Defendant has a statutory duty to timely make the required payments to
6 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

7 20. By failing to make the required payments to Plaintiffs, Defendant breached the
8 Bargaining Agreement and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA §
9 301(a).

10 21. Defendant's failure and refusal to pay the required contributions was at all times,
11 and still is, willful. Defendant continues to breach the Bargaining Agreement, and incorporated
12 Trust Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and
13 done with knowledge and intent.

14 22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing
15 and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all
16 obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381,
17 the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained
18 from continuing to refuse to perform as required thereunder.

19 23. This Court is authorized to issue injunctive relief based on the traditional standard.
20 As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the
21 possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries.
22 The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

23 24. This Complaint does not in any manner relate to statutory withdrawal liability that
24 may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to
25 pursue any such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs'
26 Plan Documents, Trust Agreements, and the law.

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Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendant as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late-paid and unpaid contributions at the rates set in accordance with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132 (g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance with the Bargaining Agreement for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all Plaintiffs.

3. For an order,

(a) requiring that Defendant comply with its obligations to Plaintiffs under the terms of the Bargaining Agreement and the Trust Agreements;

(b) enjoining Defendant from violating the terms of those documents and of ERISA; and;

1 (c) enjoining Defendant from disposing of any assets until said terms have
2 been complied with, and from continuation or operating of Defendant's business until said terms
3 have been complied with.

4 4. That the Court retain jurisdiction of this case pending compliance with its orders.

5 5. For such other and further relief as the Court may deem just and proper.

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7 Dated: August 10, 2016

SALTZMAN & JOHNSON
LAW CORPORATION

8
9 By: _____/S/

Matthew P. Minser
Attorneys for Plaintiffs